Supreme Court, U.S.
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No. 05-382

In The

Supreme Court of the United States

RESOURCE TECHNOLOGY CORPORATION,

Petitioner,

v.

ILLINOIS COMMERCE COMMISSION,

Respondent.

On Petition For Writ Of Certiorari To The Illinois Appellate Court, First District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. May a state utility commission make its own determination whether a small power producer, already certified as a "qualified facility" ("QF") by the Federal Energy Regulatory Commission ("FERC") under exclusive authority granted by Congress pursuant to the Public Utilities Regulatory Policies Act ("PURPA"), is in compliance with the FERC's QF regulations?

2. Did the Illinois Appellate Court err in holding, in conflict with the opinion of the United States Court of Appeals for the Ninth Circuit in *Independent Energy Producers Assoc., Inc., et al. v. California Public Utilities Commission, et al.*, 36 F.3d 848 (9th Cir. 1994), that a state utility commission is not preempted by federal law from determining whether a federally-certified QF is in compliance with the FERC's QF regulations?

PARTIES TO THE PROCEEDING

Resource Technology Corporation, Petitioner/Plaintiff.

Illinois Commerce Commissi n, Respondent/Defendant.

RULE 29.6 STATEMENT

The Petitioner is a 100% wholly-owned subsidiary of Rumplestiltskin (USA), Inc., a privately-held company. There are no publicly-held companies that hold any stock of the Petitioner. The Petitioner is currently undergoing a reorganization pursuant to Chapter 11 of the federal bankruptcy laws in the United States Bankruptcy Court for the Northern District of Illinois, Case No. 99 B 35434. (R. C00004; App. 112.)

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CITATIONS OF OPINIONS AND ORDERS

All pertinent decisions in this case to date are entitled *Resource Technology Corporation v. Illinois Commerce Commission*. The opinion of the Illinois Appellate Court, First District (App. 1-13) is reported at 354 Ill. App. 3d 895, 822 N.E.2d 50 (1st Dist. 2004). The Illinois Appellate Court's order denying Petitioner's timely filed petition for rehearing (App. 22) is reported at 2005 Ill. App. LEXIS 130 (1st Dist. Feb. 2, 2005). The Illinois Supreme Court's order denying leave to appeal (App. 23) is reported at 215 Ill. 2d 619, 2005 Ill. LEXIS 829 (2005). The opinion of the Illinois circuit court (trial court) (App. 14-21) is unreported.

BASIS FOR JURISDICTION IN THIS COURT

The opinion of the Illinois Appellate Court, First District, was entered on December 28, 2004. (App. 1-13.) The Illinois Appellate Court denied Petitioner's timely filed Petition for Rehearing on February 2, 2005. (App. 22.) On May 25, 2005, the Illinois Supreme Court denied Petitioner's timely filed Petition for Leave to Appeal. (App. 23.) On August 16, 2005, Justice John Paul Stevens extended the time for filing this Petition for Certiorari to and including September 22, 2005. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

The Supremacy Clause of the Constitution provides in relevant part: "[T]he Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2.